

2021 APAAC Annual Legal Assistant Conference

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BRADY V. MARYLAND & ARIZONA'S STATEWIDE INTEGRITY DATABASE

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Brady v. Maryland: What you should know

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A Brief Background

The Bill of Rights

The Fifth Amendment

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

dis·clo·sure /dis'klōZHər/ noun

The action of making new or secret information known. To make known. To reveal.

The Constitution and Discovery

- Constitution doesn't specifically address the issue
- "There is no general constitutional right to discovery in a criminal case..."
Weatherford v. Bursey, 429 U.S. 545, 559-561 (1977).
- But certain disclosure by the prosecution is required by the **Due Process clause**.



The Constitution, Disclosure, and the Fair Trial

- Duty to disclose/correct when testimony was false.
- Duty to disclose prior recorded statements.
- Duty to disclose favorable evidence
 - Guilt
 - Punishment
 - Impeachment
 - “Brady” material



Napue v. Illinois

- ***Napue v. Illinois*, 360 U.S. 264 (1959)**
- The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction...does not cease to apply merely because the false testimony goes only to the credibility of the witness.

Napue

- **Facts:**

- Napue was tried and convicted for the 1938 murder of an off-duty Chicago policeman.
- The state's key witness at trial was a co-defendant, Hamer, who was serving 199 years for his participation.

Napue

- **Cross examination:**

- Q: Did anybody give you a reward or promise you a reward for testimony?
- A: There ain't nobody promised me anything.

- **Redirect:**

- Q: Have I promised you that I would recommend any reduction of sentence to anybody?
- A: You did not.

- Trial testimony of George Hamer

Napue

- **Issue on appeal:**
- Post-conviction filing by prosecutor showed – contrary to trial testimony – that Hamer had been promised leniency for his testimony.
 - Did prosecutor's failure to correct false testimony violate Napue's due process rights?

Napue

- “It is of no consequence that the falsehood bore upon the witness' credibility rather than directly upon defendant's guilt. A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth.”

-*Id.* at 269 (citation omitted).

Brady v. Maryland

- *Brady v. Maryland*, 373 U.S. 83 (1963)
- **Facts:**
 - Brady and a co-defendant, Boblit, were separately tried and convicted for a 1958 murder committed in the course of a robbery. Both were sentenced to death.
 - The prosecution disclosed four signed confessions by Boblit implicating Brady as the person that actually murdered the victim, but did not disclose a fifth unsigned confession indicating Boblit had done the deed.

Brady

- **Issue on appeal:**
 - Did the prosecutor's failure to disclose the unsigned confession violate Brady's due process rights?

Brady

- *Brady v. Maryland*, 373 U.S. 83 (1963)
- “We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.”

-*Id.* at 87 (emphasis added)

Brady

- ***Brady v. Maryland*, 373 U.S. 83 (1963)**
- “Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly.”

-*Id.* at 87

Brady requirements, generally:

- The government has a duty to disclose
 - material evidence
 - favorable to the defendant
 - in its possession
- Evidence affecting the credibility of a government witness is “material”
- Failure to disclose violates due process regardless of the good faith or bad faith of the prosecutor

Giglio v. United States

- *Giglio v. United States*, 405 U.S. 150 (1972)
- **Facts:**
 - Giglio was tried and convicted for passing forged money orders and was sentenced to five years in prison, based largely on the testimony of co-conspirator Robert Taliento (bank teller).
 - Giglio was indicted by one AUSA, DiPaola, who promised Taliento immunity in exchange for his testimony. Giglio was then tried by a second AUSA, Golden, who was unaware of the agreement and did not disclose it.

Giglio

■ Cross examination of Taliento:

- Q: Did anyone tell you at any time that if you implicated somebody else in this case that you yourself would not be prosecuted?
- A: Nobody told me I wouldn't be prosecuted.
- Q: They told you you might not be prosecuted?
- A: I believe I still could be prosecuted.

Giglio

- **Issue on appeal:**
 - Did the prosecutor's failure to disclose the immunity agreement violate Giglio's due process rights?

Giglio

- **Cross examination:**

- Q: Were you ever arrested in this case or charged with anything in connection with these money orders that you testified to?
- A: Not at that particular time.
- Q: To this date, have you been charged with any crime?
- A: Not that I know of, unless they are still going to prosecute.

- Trial testimony of Robert Taliento

Giglio

- ***Giglio v. United States*, 405 U.S. 150 (1972)**
- “[W]hether the nondisclosure was a result of negligence or design, it is the responsibility of the prosecutor. The prosecutor's office is an entity and as such it is the spokesman for the Government. A promise made by one attorney must be attributed, for these purposes, to the Government.”

-*Id.* at 153.

Arizona's "Giglio" - Serna

- ***State v. Serna*, 163 Ariz. 260 (1990)**
- "It is firmly established that the state cannot knowingly conceal any leniency agreement entered into with a material witness."

- *Id.* At 264.

Arizona's "Giglio" - Lukezic

- ***State v. Lukezic*, 143 Ariz. 60 (1984)**

- **Facts:**

Lukezic was tried and convicted for 11 crimes including two counts of first degree murder and one count of conspiracy to commit murder.

The prosecution did not disclose three forms of state assistance to two key witnesses:

- 1. The state's pretrial assistance to state's witness, Arnold Merrill, and his family, in facilitating the Merrill's car payments to GMAC so as to avoid repossession of the vehicle;
- 2. The state's assistance to Arnold Merrill in arranging for him to receive regular prescription drugs outside of ordinary jail custom;
- 3. The state's assistance to Arnold Merrill and George Campanogni in the preparation of presentence reports which were in substantial part altered, thereby assuring Merrill and Campanogni of certain sentences.

Arizona's "Giglio" - Lukezic

- *State v. Lukezic*, 143 Ariz. 60 (1984)
- "Whether these witnesses received benefits due to prosecutorial design or inexcusable neglect is immaterial, because the prosecution is to blame in either case. We certainly do not subscribe to the cavalier philosophy that the state can do no evil when acting in the name of good."

- *Id.* at 68 (emphasis added)

Arizona's "Giglio" - Lukezic

- ***State v. Lukezic*, 143 Ariz. 60 (1984)**
- "A prosecutor's office cannot get around *Brady* by keeping itself in ignorance or compartmentalizing information about different aspects of a case."

- *Id.* at 67

Arizona's "Giglio" - Lukezic

- ***State v. Lukezic*, 143 Ariz. 60 (1984)**
- "Courts have sometimes, however, ordered new trials due to the prosecution's failure to disclose *Brady* information even when the prosecution is unaware of this information. See [*Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 \(1972\)](#); [*Santobello v. New York*, 404 U.S. 257, 262, 92 S.Ct. 495, 498, 30 L.Ed.2d 427](#); and [*United States v. Exposito*, 523 F.2d 242, 248 \(7th Cir.1975\)](#), and the cases cited therein. See also [rule 15.1\(d\)](#) and accompanying comment (duty of disclosure extends to information known by "other persons" including investigators)."

Materials Not in the Possession of the Prosecutor

- *Kyles v. Whitley*, 514 U.S. 419 (1995)
- **Facts:**
 - Kyles was convicted of the 1984 murder and robbery of a 60 year-old woman and was sentenced to death.
 - Kyles' conviction was based, in part, on information provided by Joseph "Beanie" Wallace. At trial, Kyles portrayed Beanie as the shooter.
 - Conflicting statements by Beanie and additional witness statements were never disclosed to either the prosecution or defense.

Materials Not in the Possession of the Prosecutor

- **Issue on appeal:**

- Did the failure of the prosecution to disclose interview notes and documents in the possession of the police detectives constitute a denial of Kyles' due process rights?

Materials Not in the Possession of the Prosecutor

- *Kyles v. Whitley*, 514 U.S. 419 (1995)
- “This...means that the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government’s behalf in the case, including the police.... [W]hether the prosecutor succeeds or fails in meeting this obligation...the prosecution’s responsibility for failing to disclose known, favorable evidence rising to a material level of importance is inescapable.”

- *Id.* at 437-438

What about victims?

- The victim does not become an agent of the state simply by his cooperation. [State v. Kevil, 111 Ariz. 240, 527 P.2d 285 \(1974\).](#)

Rule 15.1, Ariz. R. Crim. P.

- **b. Supplemental Disclosure; Scope.** Except as provided by Rule 39(b), the prosecutor shall make available to the defendant the following material and information within the prosecutor's possession or control:

...

(8) All then existing material or information which tends to mitigate or negate the defendant's guilt as to the offense charged, or which would tend to reduce the defendant's punishment therefor.

Rule 15.1, Ariz. R. Crim. P.

- **f. Disclosure by Prosecutor.** The prosecutor's obligation under this rule extends to material and information in the possession or control of any of the following:
 - (1) The prosecutor, or members of the prosecutor's staff, or,
 - (2) Any law enforcement agency which has participated in the investigation of the case and that is under the prosecutor's direction or control, or,
 - (3) Any other person who has participated in the investigation or evaluation of the case and who is under the prosecutor's direction or control.

Prosecutors' Ethical Rules

- Ethical Rule 3.8 (D)
- “make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor...”

Best Way to Ensure Compliance with *Brady*?

- Work with your team: Rule 15.1 (F)
- The team is
 - The prosecutor
 - Any fellow MCAO prosecutors, paralegals, staff
 - Any participating law enforcement agency
 - Any other person participating in the investigation of this case

